**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

FORMULATED MATERIALS, LLC,   )
an Oklahoma limited liability company,   )
)
        Plaintiff,   )
)
v.   )   Case No. CIV-24-388-SLP
)
HICO CONCRETE, INC.,   )
a Tennessee corporation,   )
)
        Defendant.   )

O R D E R

Before the Court is Plaintiff's Motion for Default Judgment [Doc. No. 13]. The record reflects that on April 16, 2024 Plaintiff filed its Complaint [Doc. No. 1]. Plaintiff served Defendant on April 25, 2024. Defendant has failed to timely answer or otherwise respond.

Plaintiff requests the entry of default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure. Rule 55 mandates that a "two-step process" be followed where a plaintiff seeks entry of a default judgment. First, the clerk must enter a default. *See* Fed. R. Civ. P. 55(a). Second, following an entry of default, the plaintiff may proceed to obtain a default judgment. Fed. R. Civ. P. 55(b).

Plaintiff has not previously moved for the entry of default. Thus, its request for entry of a default judgment is premature. *See Meyers v. Pfizer, Inc.*, 581 F. App'x 708, 710 (10th Cir. 2014); *see also Garrett v. Seymour*, 217 F. App'x 835, 838 (10th Cir. 2007) (describing clerk's entry of default under Rule 55(a) as "a prerequisite for the entry of a default judgment" under Rule 55(b)(1)); *Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781,

783 (8th Cir. 1998) ("[E]ntry of default under Rule 55(a) must precede grant of a default judgment under Rule 55(b)."); *Flohrs v. Eli Lilly & Co.*, No. 12–2439–SAC, 2012 WL 5266116, at *1 (D. Kan. Oct. 23, 2012) (unpublished op.) (addressing the "two sequential steps" of Rule 55 and finding the plaintiff's motion for default judgment premature where he had not first requested an entry of default from the clerk). Accordingly, Plaintiff's motion for default judgment is DENIED without prejudice to refiling upon obtaining the clerk's entry of default.

IT IS SO ORDERED this 19th day of August, 2024.

SCOTT L. PALK
UNITED STATES DISTRICT JUDGE